

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERRI AVERY,

Defendant.

Case No. 4:18-CR-20086

Judge: Hon. Laurie J. Michelson

**Government's Motion to Continue  
Trial**

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The United States of America hereby moves to continue the trial in this matter, currently set for June 24, 2019, and associated deadlines, for a period of at least six months to allow the government to review recently secured evidence and determine if it is appropriate to pursue additional related counts in this matter.

Date: May 2, 2019

Respectfully Submitted,

MATTHEW SCHNEIDER  
United States Attorney

/s/ Mark McDonald  
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**Government's Brief in Support of  
Motion to Continue Trial**

The United States of America hereby moves to continue the trial in this matter, currently set for June 24, 2019, and associated deadlines, for a period of six months to allow the government to review recently secured evidence and determine if it is appropriate to pursue additional related counts in this matter. To avoid two trials involving the same evidence, the ends of justice served by a continuance of at least six-month, in particular the interest in judicial economy, outweigh the best interests of the public and Defendant in a speedy trial.<sup>1</sup>

On February 7, 2018, Defendant Gerri Avery was charged in Count Four of the relevant indictment with corruptly endeavoring to obstruct and impede the due administration of the Internal Revenue laws, in violation of 26 U.S.C. § 7212(a). (Doc. # 1). The indictment alleges Defendant obstructed payroll tax collection proceedings conducted by the Internal Revenue Service ("IRS") seeking to recover past due payroll taxes owed by Integrated HCS Practice Management ("Integrated Management") for the

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<sup>1</sup> On April 24, 2019, the government contacted defense counsel regarding Defendant's position on this motion. On April 24, 2019, defense counsel advised she anticipated she would oppose the motion, but could not provide a final answer. On April 29, 2019, the government contacted defense counsel again seeking a response regarding Defendant's position on the motion, but did not receive a reply.

third quarter of 2013 through the first quarter of 2014. (Doc. # 1). The current indictment alleges in 2014, when the IRS attempted to determine the individuals who controlled Integrated Management's finances and therefore should be held responsible for paying those unpaid payroll taxes, Defendant Avery provided false information to the IRS by directing the IRS to investigate individuals she knew did not in reality control Integrated Management's finances. (Doc. # 1 at 7).

In the same indictment, Defendants Edward Cespedes and Joseph DeSanto were each charged with the willful failure to account for, collect, and pay over Integrated Management's payroll taxes, in violation of 26 U.S.C. § 7202. (Doc. # 1). The indictment alleges Defendant Cespedes and Defendant DeSanto were each a "responsible person" with the corporate responsibility to collect, truthfully account for, and pay over Integrated Management's payroll taxes. (Doc. # 1 at 4). Both Defendant Cespedes and Defendant DeSanto pleaded guilty to Count Two of this indictment on May 1, 2019. (Doc. # 69; Doc. # 71).

The government has recently obtained additional evidence in this matter and must determine if it is appropriate to pursue additional related counts arising from the failure of Integrated Management to pay their payroll taxes. To show Defendant Avery's obstruction of the IRS in violation of Count Four of the indictment, the government must present evidence contradicting her statements to the IRS. That is to say, in order to prove that Defendant Avery's statements regarding who controlled Integrated Management's finances were false the government will have to present evidence showing, among other things, who at Integrated Management was a responsible person with respect to the payroll taxes. As such, the evidence at Defendant Avery's trial will

also need to be admitted by the government at the trial of any additional related counts arising from the failure of Integrated Management to pay their payroll taxes.

Accordingly, to prevent two separate juries from needing to listen to the same evidence, and to prevent the Court from holding two trials where the same evidence is presented, at least a six-month continuance should be granted.

The government therefore asks the Court to continue this trial and the associated deadlines for a period of at least six months to allow the current matter to be tried with any potential related counts arising from the failure of Integrated Management to pay their payroll taxes. As the ends of justice served by such a continuance outweigh the best interest of the public and Defendant in a speedy trial, the government further asks the Court to toll the Speedy Trial Act clock for the duration of the relevant continuance.

18 U.S.C. § 3161(h)(7)(A).

Date: May 2, 2019

Respectfully Submitted,

MATTHEW SCHNEIDER  
United States Attorney

/s/ Mark McDonald  
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May 2019, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

Kimberly W. Stout  
*Defense Counsel for Gerri Avery*

/s/ Mark McDonald  
Mark McDonald  
Trial Attorney